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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,725	10/29/2003	Jeffrey M. Sieracki	1023-227US01	6322
28863 7590 09/27/2007 SHUMAKER & SIEFFERT, P. A. 1625 RADIO DRIVE SUITE 300 WOODBURY, MN 55125			EXAMINER KAHELIN, MICHAEL WILLIAM	
			ART UNIT	PAPER NUMBER
			3762	
			MAIL DATE	DELIVERY MODE
			09/27/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/696,725	SIERACKI ET AL.	
	Examiner	Art Unit	
	Michael Kahelin	3762	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 September 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1, 2, 4, 8, 10-14, 18-23, 33, 34, 38-41 and 54-58.
Claim(s) withdrawn from consideration: 5-7, 15-17 and 35-37.


AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
Please see attached Detailed Action.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

MR K
9/25/07


ANGELA D. SYKES
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

Continuation of 3. NOTE: The limitation "previously stored within a memory of the implantable medical device" requires further search and consideration .

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 9/13/2007 have been fully considered but they are not persuasive. In regards to claims 1, 13, 33, and 54, Applicant argued that Stomberg et al. (US 6,665,565, hereinafter "Stomberg") fails to disclose or render obvious "resetting a watchdog timer maintained by the watchdog unit in response to receipt of each of the stay-alive signals". However, Stomberg discloses that the extender module enters a recovery state in response to "interruption in the communications link between the medical communications system and extender module" (col. 4, lines 33-35). Stomberg's extender module is processor-based system. Further, "interruption" necessarily requires that there is some time period of a total cessation of something. Applicant's examples of situations where Stomberg's device would allegedly not meet the claim limitations (e.g., monitoring data throughput, signal strength, etc.) are not valid exceptions to the inherent functioning of the device. For instance, if monitoring an interruption in data throughput, this interruption would have to be based on at least one clock cycle of the processor-based system, thus serving as a "watchdog timer". Additionally, monitoring signal strength is not monitoring an *interruption* in the communications link, as Stomberg discloses. An interruption necessarily means a cessation. The only way that a processor-based system can perform this is by counting some number of clock cycles wherein no communications link exists. As such, the Examiner maintains the position that Stomberg inherently discloses the claimed

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features. Alternatively, claims 1, 13, 33, and 54, were rejected under 103(a) in view of Stomberg and the well-known principle of utilizing watchdog timers to determine the interruption in a signal (McGraw (US 5,755,745) and Starkweather (US 2001/0041920) are two of many medical devices utilizing watchdogs).

2. In regards to claims 8, 18, 38, and 56, the arguments are drawn to new limitations that will not be entered because they require further search and consideration.

3. In regards to claims 11, 20, and 40, regardless of the amount of power, the signals sent and received by the watchdog are a form of power because they are energy-carrying waves.

4. In regards to claim 23, because the watchdog unit *is* the programming head, the watchdog unit couples the cable to the programming head.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Kahelin whose telephone number is (571) 272-8688. The examiner can normally be reached on M-F, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MWK

MRP
9/25/07